

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

HITUL GANDHI, individually, and on behalf of §
a class of others similarly situated, §

Plaintiffs, §

v. §

Case No. 1:08-cv-00248

DELL INC., §
and §

DELL MARKETING USA L.P., §

Defendants. §

DEFENDANTS' SUR-REPLY IN OPPOSITION TO
PLAINTIFFS' MOTION TO ENFORCE

Defendants ("Dell") file this Sur-Reply in Opposition to Plaintiffs' Motion to Enforce the Court's October 20 Order Directing Class Notice and Memorandum in Support Thereof.

Since the Court issued its October 20, 2009, Order, the parties have been working to reach an agreement concerning the selection of an acceptable third-party administrator (TPA) and such TPA's obligation to keep the list of persons and contact information supplied to it by Dell confidential. Today, Dell signed a Memorandum of Agreement (MOU) confirming the parties' agreement with respect to the selection of a TPA and the confidentiality of information supplied by Dell to the TPA. (See Exhibit A.) Accordingly, and subject to the terms of the MOU signed by the parties, Dell is today withdrawing its objection to the selection of Garden City as the TPA. Pursuant to the Court's October 20, 2009, Order, Dell will, on a confidential basis, provide Garden City with the list of persons to whom notice will be sent, along with available contact information, on or before Friday, December 18, 2009. Specifically, Dell will, on a confidential basis, provide Garden City with the names and available contact information for the 2,544 individuals who are or

were (at any time between September 1, 2006, and the present) telephone-dedicated employees whose primary job duties included assisting Dell business customers and/or selling Dell products to business customers.

Dell is in compliance with the Court's October 20, 2009, Order. The Court should accordingly deny Plaintiffs' Motion to Enforce.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of December, 2009, a copy of the foregoing pleading was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system.

/s/ Jeffrey C. Londa
Jeffrey C. Londa